

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

INDEPENDENT OWNERS)
COOPERATIVE, LLC,)
v.)
Plaintiff,) Docket no. 08-CV-87-P-S
FREDERICK PUBS LLC et al.,)
Defendants.)

ORDER SETTING HEARING ON MOTION FOR PRELIMINARY INJUNCTION

Before the Court is Plaintiff's Motion for Preliminary Injunction (Docket # 25), which seeks preliminary injunctive relief against Defendants Beth Pubs, Inc., Mall Pubs, LLC and Hospitality Pubs Management, Inc. (together, "Defendants"). Defendants have filed no opposition or response to this Motion.

Absent any objection, the Court's ordinary practice would be to grant the requested preliminary injunction so long as the relief requested was supported by the record. However, upon preliminary review of the Motion, the Court has two concerns: (1) it is not clear that adequate notice has been provided to the adverse parties in accordance with Federal Rule of Civil Procedure 65(a)(1)¹ and (2) Plaintiff's Motion for Preliminary Injunction is silent as to the

¹ The Court notes that the pending Motion for Preliminary Injunction does not include a request for temporary restraining order pursuant to Rule 65(b). Thus, the Court may only provide injunctive relief "on notice to the adverse party." Fed. R. Civ. P. 65(a)(1). In this case, the issue of proper notice is complicated by the fact that the Defendants are corporations and their counsel of record has withdrawn as of January 6, 2009. The Court has reviewed the Certificate of Service attached to the Motion. Although Plaintiff's Counsel indicates he has served the Motion on Attorney Joseph Kluger, Attorney Kluger is not and has never been listed as counsel of record in this matter. Absent further confirmation that Attorney Kluger received Plaintiff Counsel's mailing and that he is acting as counsel for Defendants, the Certificate of Service does not establish that Defendants in fact received notice of the pending request for injunctive relief.

issue of security, which the Court is required to order in accordance with Federal Rule of Civil Procedure 65(c).

The Court hereby sets Plaintiff's Motion for Preliminary Injunction for a hearing to be held at 10 A.M. on April 30, 2009. At the hearing, the Court expects Plaintiff to present evidence in support of its motion and address the two concerns outlined above. In advance of the hearing, Plaintiff is hereby ORDERED to serve a copy of this Order and the Motion for Preliminary Injunction, along with all supporting attachments, on all Defendants. All parties are hereby notified that absent a showing of good cause at the hearing (or prior to the hearing by written submission), the Court intends to consolidate its hearing on the Motion for Preliminary Injunction with a trial on the merits in accordance with Federal Rule of Civil Procedure 65(a)(2).

The Court is committed to moving this case forward despite the fact that Defendants have complicated matters by failing to appear since January 6, 2009, in blatant disregard of the Court's prior orders. (See Jan. 6, 2009 Order (Docket # 21).) **Any Defendant who does not appear with counsel at the April 30, 2009 hearing is subject to the entry of default for failing to defend in accordance with Federal Rule of Civil Procedure 55(a).**

All parties should note that the Court has reserved one and a half hours for the April 30, 2009 hearing. If counsel anticipates needing additional time, they shall immediately contact the Clerk's Office.

SO ORDERED.

/s/ George Z. Singal
United States District Judge

Dated this 16th day of April, 2009.